

IN THE
Supreme Court of the United States
OCTOBER TERM, 1976

No. 76- **569** ■

NEW YORK SHIPPING ASSOCIATION, INC.,
Petitioner,
v.

NATIONAL LABOR RELATIONS BOARD,
Respondent,
and

TWIN EXPRESS, INC.,
Respondent,
and

CONSOLIDATED EXPRESS, INC.,
Respondent,
and

TRUCK DRIVERS UNION LOCAL 807, IBT,
Respondent.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

ALFRED A. GIARDINO
Counsel for Petitioner
New York Shipping Association, Inc.
25 Broadway
New York, New York 10004

CONSTANTINE P. LAMBOS
JACOB SILVERMAN
DONATO CARUSO
Of Counsel

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Petitioner, New York Shipping Association, Inc. ("NYSA") respectfully prays that a Writ of Certiorari issue to review the judgment entered in this proceeding by the United States Court of Appeals for the Second Circuit on September 9, 1976.

Opinions Below

In a divided opinion, the Court below affirmed the order of the National Labor Relations Board ("NLRB" or "the Board"). The NLRB's order held illegal certain provisions of petitioner's collective bargaining agreement with the

International Longshoremen's Association, AFL-CIO ("ILA").¹ These contractual provisions, known as the Rules on Containers (the "Rules"), were determined to be outside the protection of the "work preservation" doctrine enunciated by this Court in *National Woodwork Manufacturers Association v. NLRB*, 386 U.S. 612 (1967) (hereafter "National Woodwork"). In 1970, the identical Rules had been found to be valid work preservation provisions by another panel of the Second Circuit Court of Appeals.²

The opinion of the Second Circuit, dated June 29, 1976, has not been officially reported and is set forth in the Joint Appendix (A79-A96). The Board's decision and order, dated December 4, 1975 (A58-A78), and the decision of Administrative Law Judge Arnold Ordman, dated December 9, 1974 (A1-A57) upholding the "Rules" but which was reversed by the Board, are both reported at 221 NLRB No. 144.

Jurisdiction

The majority opinion affirming the Board's order by Senior Judge Wyzanski, of the District of Massachusetts, sitting by designation, was concurred in by Senior Circuit Judge Moore. Circuit Judge Feinberg dissented. A petition for rehearing *in banc* was denied on August 6, 1976 (A98) and judgment was entered September 9, 1976 (A99-A101). This petition for a certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 USC § 1254(1).

¹ ILA was also a petitioner in the court below, and is filing a separate petition.

² *Intercontinental Container Transport Corp. v. New York Shipping Ass'n and International Longshoremen's Ass'n*, 426 F. 2d 884 (2d Cir. 1970) (hereafter "ICTC" case).

Questions Presented

1. Did the court below violate this Court's holding in *National Woodwork* by ignoring the traditional work of the bargaining unit longshoremen—the work in controversy—and focusing instead on the work performed by others outside the bargaining unit?
2. Did the court below violate this Court's holding in *National Woodwork*, and conflict with other Circuit Court decisions, by invalidating collectively bargained provisions preserving to bargaining unit longshoremen certain historical work functions in the loading and unloading of ocean cargo because modern cargo handling techniques, which the union permitted employers to utilize, have enabled others, away from the piers, to perform similar work on the cargo?

Statute Involved

The relevant statutory provisions are Sections 8(b)(4)(ii)(B) and 8(e) of the Labor Management Relations Act of 1947, as amended ("the Act") 29 U.S.C. § 158(b)(4)(ii)(B) and 158(e)—the Secondary Boycott and Hot Cargo provisions respectively of the Act.

Section 8(b)(4)(ii)(B), so far as relevant, provides that it is an unfair labor practice for a union

"to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where . . . an objective thereof is—

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any person *Provided*, That nothing contained, in this clause (B) shall be construed to make unlawful . . . any primary strike or primary picketing;"

Section 8(e) provides that it is an unfair labor practice for a labor organization and an employer

"to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforceable and void."

Statement of the Case

A. Preliminary Statement

The facts in this proceeding are not in dispute.³ They involve the container revolution, an innovative technique in cargo handling which drastically transformed the work of the longshoreman. The legal issue—what is the work in controversy?—is relevant to all work preservation arguments seeking the sanction of the *National Woodwork* doctrine.

The particular issue here is whether longshoremen at the piers, employed under the NYSA-ILA collective agreement, may preserve for themselves, a portion of their work jurisdiction, which involves the work of stuffing (packing) cargo into containers.⁴ The empty containers are furnished by the ocean carrier employer-members of NYSA and after

³ The facts were comprehensively determined by the Administrative Law Judge, based upon a 1,500 page transcript, affidavits, and numerous exhibits. The Board reversed his decision since it disagreed with his conclusions. Thus the issue is solely one of law as both the majority and the dissent in the court below recognized (A82 and A92).

⁴ The identical issue exists on import cargo as to who shall unpack (strip) the container.

being packed with cargo the containers are transported on that carrier's vessels.

Not in dispute are containers sent to a shipper who loads his goods into them at his facility using his own employees. Those containers have always been permitted to be loaded onto the vessel without rehandling of the cargo by the ILA. However, what is in dispute is the work of stuffing "consolidated" or "LTL containers", the situation where goods of more than one shipper are packed into a single container (i.e., are consolidated). The ILA performed that type of consolidation work at the piers before containerization as well as after and insists that that work continues as part of their jurisdiction. The issue is thus whether the longshoremen have a valid claim to that work or whether one who now consolidates cargo at an off-pier facility using containers supplied by the carriers has a superior right to that work as compared to the longshoremen.

B. The Traditional Work of the ILA

For decades the ILA's jurisdiction encompassed all stevedoring and terminal activities at the extensive waterfront facilities in the Port of New York (29a-82a, 85a-89a, 842a-845a, 982a-85a).⁵ The undisputed findings of Judge Ordman described the nature of the longshoremen's work as follows:

". . . [V]irtually all solid cargo moving over the docks in the Port of New York had for decades been handled on a piece-by-piece basis by longshoremen and employees in related crafts who worked on the docks and were represented by ILA. Typically, that work included the preparation of cargo for shipment by the making up and loading of cargo on drafts, pallets and boxes for export, and the breaking down of such cargo from incoming ships for delivery to the consignees.

⁵ References are to the Appendix filed in the Court of Appeals.

The existence of a tradition that ILA longshoremen and employees in related crafts did such work is not essentially challenged" (A15) (Emphasis added).

C. The Harmonization of ILA Jurisdiction With the Container Revolution

In the 1950's, carriers in the Port of New York first instituted the technique of containerization, i.e., the packing of cargo into containers which are then loaded onto the vessel, using containers of ever increasing dimensions. Containerization of cargo, instead of handling cargo on a piece-by-piece basis, is a faster and more efficient method of loading cargo shipped by sea. It also reduces substantially the number of jobs and the quantum of work available for longshoremen. Recognizing the effect of the "containerization revolution" upon its members' work opportunities, the ILA made that issue a major item in the 1959 negotiations. It insisted upon contractual protection of its jurisdiction as to cargo moving in containers. The union maintained that a container was part of the hold of the ship and containerization might take that part of the work away from their members (988a-989a).

The container section of the 1959 collective bargaining agreement ("the 1959 agreement"), compromised the conflicting demands of the parties. Most important, the ILA permitted the use of the innovative technique to continue. The agreement had two essential parts. The first was that shipperload containers (i.e., containers with merchandise from a single shipper loaded by his employees) were permitted to move aboard vessels without rehandling of the cargo by longshoremen, subject only to the payment of a royalty on each container.⁶ Second, the smaller shipments of cargo from different shippers were still to be brought to the pier and were to be consolidated there into

⁶ The royalty was fixed by an arbitrator's award in November, 1960.

the container by the longshoremen. This was designed to protect the longshoremen's jurisdiction (850a, 1044a-1049a).

During the years that followed, although the ILA continually asserted that some carrier members of NYSA were not honoring the agreement as to consolidated containers, the terms of the 1959 agreement were continued in subsequent contracts without any significant change. Various measures were adopted by the parties to insure compliance by the carriers with the terms of the agreement.

In the late 1960's, the spread of the container revolution to the major shipping trade, the North Atlantic, appeared imminent. This created great concern among longshoremen as to the effect upon their jobs. Accordingly in the 1968 negotiations, the ILA insisted upon the stuffing of all containers, without exception. If acceded to, this would have ended the container revolution. NYSA rejected the demands and the ILA struck. The National Emergency provisions of the Taft-Hartley Act, 29 U.S.C. §§ 171-82, were invoked, including its injunctive provisions. Upon expiration of the 80-day cooling off period, the ILA again went on strike for 57 days. The Presidential Board of Inquiry reported that the impact or consequences of containerization was one of the two critical issues causing the impasse stating:

"The union is primarily interested at this time in having the same protective measures applicable everywhere with respect to the effects it anticipates from a broadened use of containerization . . . They consider it not unlikely . . . that large portions of the union's membership may be subjected to substantial losses of earnings and jobs (218a)".

The parties eventually agreed to continue the basic provisions of the 1959 agreement. The new labor contract signed in 1969 included a codification of the specific rules dealing with containers that had been formulated and

developed over the ten-year period since 1959 (the "Rules"). It also added provisions for liquidated damages to be imposed upon carriers for violation of the Rules (1017a-1018a, 1053a-1054a, 1093a-1094a).

In 1970, the Rules were tested in the courts. The Second Circuit found they had a valid work preservation objective in the *ICTC* case.⁷ Relying upon the declared validity of the Rules, the two subsequent contracts between CONASA and ILA set forth the Rules as one of the seven basic contract subjects agreed upon. However, there were continuing complaints by the ILA that the Rules were not being enforced. Therefore in 1973, it was agreed that, to prevent further violations, carriers would be prohibited from supplying their containers to any consolidator whose facilities were being operated in violation of the Rules ("the Dublin Rules").

D. The Unfair Labor Practice Charges and the Proceedings Below

Consolidated Express, Inc. ("Consolidated") and Twin Express, Inc. ("Twin") are off-pier consolidators organized many years after the 1959 agreement (130a, 134a, 804a-805a). They solicit cargo at their New York off-pier facilities, from various shippers, pack the cargo into the containers supplied by NYSA ocean carriers (728a, 805a) and forward the consolidated container to an ocean carrier in the New York-Puerto Rico trade for shipment on the vessel (403a).

Consolidated and Twin are not parties to the NYSA-ILA contract. They never employed ILA members. The ILA

⁷ The Rules set the standards for agreements in other ILA ports from Maine to Hampton Roads, Va. In 1970 these ports aligned themselves into a single overall employer bargaining unit, the Council of North Atlantic Shipping Associations (CONASA). These ports are Providence, Boston, the Port of New York, Philadelphia, Baltimore and Hampton Roads. The negotiations for the 1971 and subsequent contracts were between CONASA and the ILA and the resulting agreements were applicable in the named ports. The Rules were also adopted in ILA contracts with other employers in the South Atlantic and Gulf Coasts.

has neither sought to organize nor to represent their employees (833a).

From the time Consolidated and Twin commenced their consolidation work they "were aware . . . that ILA was claiming jurisdiction over the work they were performing and that NYSA acknowledged that jurisdiction" (A43). Throughout that period it is undisputed that longshoremen stuffed and stripped containers on the docks and "that NYSA companies did have numerous longshoremen on their payrolls designated for stuffing and stripping work" (A36 n.8). NYSA and ILA made vigorous efforts to enforce the Rules. The NYSA ocean carriers involved repeatedly stated that they were adhering to the Rules, were rehandling the cargo in consolidated containers at the piers, and employed longshoremen for the stuffing of containers. At various times from 1966 and for periods ranging up to several weeks, the cargo in the containers of Consolidated and Twin were rehandled at the piers by ILA longshoremen as required by the Rules. Nevertheless, most of the consolidated containers shipped by Twin and Consolidated moved on to the ocean carriers' vessel without rehandling of their cargo by longshoremen until the Dublin Rules were implemented in early 1973.⁸

When carriers refused to supply containers to the charging parties, pursuant to the Dublin Rules, unfair labor practice charges were filed with the 22nd Region of the NLRB. The charges, similar to the charges that had unsuccessfully been filed by the consolidator in the *ICTC* case in the same Region in 1970,⁹ asserted that the Rules were

⁸ Petitioners asserted that a variety of reasons explained the successful avoidance of the Rules by the charging parties which included the preparation of fraudulent documents (458a) and payoffs to the carriers' supervisory employees (828a-829a).

⁹ The plaintiff in *ICTC* had also initiated related proceedings in the 22nd Region claiming, as here, that the Rules violated the Act. The charges were dismissed by the Region since it found that the Rules have "as its object, the preservation of work performed by longshoremen" (269a-270). The dismissal was affirmed on appeal by the NLRB's General Counsel (272a).

violate of the Act. The charges were made the subject of consolidated NLRB complaint proceedings before Administrative Law Judge Arnold Ordman. Judge Ordman dismissed the complaints finding the Rules valid and proper work preservation clauses.¹⁰

The Board reversed Judge Ordman's decision. The different results reached by the Board and the Majority on the one hand, and Judge Ordman and Judge Feinberg on the other hand, resulted from their differing conclusions as to the nature of the work in controversy.

To the Board, the disputed work was "the LCL and LTL container work performed by [the two consolidators] at their own off-pier premises" (A68). Although the Board conceded that "since the advent of containerization", longshoremen had stuffed containers, it determined that this was only where necessary to perform the loading and unloading of the vessel which was the longshoremen's traditional work. To the Board, somehow this container work was allegedly a different type of container work than that engaged in by the consolidators. Accordingly, in the Board's view, the ILA was seeking to illegally acquire work performed by others. *National Woodwork* was distinguished on the ground that there "the very work claimed had once been performed exclusively" by employees in the unit represented by the union (A70).

The Majority opinion of the Court below, without making any independent analysis, quoted that part of the Board's decision discussing what was the work in contro-

¹⁰ Other unfair labor practice charges challenging the Rules have been filed in other regions of the NLRB, and are at various stages of resolution, although none have as yet been passed upon by the Board. See, e.g., *Humphrey v. ILA*, 401 F. Supp. 1401 (E.D.Va. 1975) (injunction denied—appeal pending); *Danielson v. ILA*, 75 Civ. 4027 (S.D.N.Y. 1975) (action stayed); *ILA and Associated Transport*, JD-540-76 (August 19, 1976) (exceptions filed with the Board).

versy (i.e., A68 to A70, quoted at A89 to A91) and affirmed on that ground.¹¹

The dissent would have reversed the Board's decision since "it rests upon a basic error of law" (A92-93). The error was in focusing on the work done by the off-pier consolidators rather than the work done in the past by the protected unit.

REASONS FOR GRANTING WRIT

I

The question as to the work in controversy is a substantial and recurring one in the administration of the Act. The decision below, which rests upon a basic error of law and which significantly limits the work preservation doctrine, conflicts with this Court's *National Woodwork* decision sanctioning that doctrine.

The fundamental legal error committed by the majority in its definition of the work in controversy is a pervasive one, extending beyond this case. It is found in every work preservation case. By adopting the Board's erroneous standard, i.e., looking at the work of the outsider and ignoring the traditional work of the unit employees before innovation, the death knell of work preservation has been sounded. The decision is contrary to *National Woodwork*, *ICTC* and all other precedent on which labor and management have relied upon in their negotiations in the area of innovation.

¹¹ The Majority stated that as to the NLRB's other reasons such as abandonment "[w]e are not similarly impressed," but "such points are moot in view of the ground we have given for enforcement of the order" (A92).

In view of this statement by the Majority, the Board's error as to abandonment has not been raised in this Petition.

The Board and the majority have turned their backs on *National Woodwork's* teaching that conflicts over automation are to be resolved at the bargaining table. The resulting agreement, as the dissent noted, is entitled to be enforced regardless of its impact on third parties. If the jobs sought to be protected are "the type of unit work which the employees have traditionally performed" then the clause satisfies *National Woodwork* since it is not necessary that the employees "actually perform the work in question", *NLRB v. Enterprise Association of Steam, etc. Local Union No. 638*, 521 F.2d 885, 897 n. 25 (D.C. Cir. 1975).¹³

Here the Board has frustrated the *National Woodwork* policy by setting aside the Rules which had resulted from hard bargaining and contending economic pressures over the many years. The decision here ignores the history of negotiation, the demands upon the employer and the "surrounding circumstances of the dispute." Instead it focuses on the effect upon the third party which this Court held was an irrelevant consideration (386 U.S. at 627). The Board thus has rewritten Section 8(e) to comport with its own view of what our national labor policy should be, ignoring the warning in *National Woodwork* that this was for Congress. What this Court declined to do in *National Woodwork*, the Board has done here.

¹³ Certiorari has been granted in the *Enterprise* case, Docket No. 75-777 involving one aspect of the work preservation doctrine as to "the right of control" doctrine. The Court of Appeals for the District of Columbia in refusing to enforce the Board's order had held that the Board's approach as to the "right of control" was "a continuing attempt to circumvent the congressional proviso and is inconsistent with the Court's analysis in *National Woodwork*". [521 F.2d at 901]. The same objection is present here, but the Board's approach here has even a far wider significance. Thus in a recent decision, *Plumbers Local 342*, 225 N.L.R.B. No. 195, 93 LRRM 1146 (September 17, 1976) the Board found a work preservation clause violative of Section 8(e) even though it found the "right of control" doctrine inapplicable, and relied upon its decision in the instant case.

More specifically, if, as a result of this case, the Rules are now held invalid, the entire framework of labor relations in the longshore industry on the East and Gulf coasts, will be radically and significantly altered. The growth of containerized cargo in all ports has given rise to virtually identical work preservation issues, and to the virtually identical collectively bargained resolutions thereof in all ports. The Board's broad order invalidating the maintenance and enforcement of the Rules will thus have equal application throughout the ILA's jurisdiction, from Maine to Texas, where the Rules are presently in effect.

By striking down the Rules, the majority has cast asunder "carefully constructed collective bargaining agreements and rules which were the result of hard bargaining and contending economic pressures" (Dissent, A95). It has created a critical gap in the labor relations in a vital national industry. The bargain struck many years ago has been undone and the parties will once again be forced to grapple with the question of innovation which they thought had been resolved.

The decision stands as a stark warning to any union faced with the demand to permit innovation, that it does so at its peril. Regardless of the agreement of the parties, any outsider may claim a part of the union's jurisdiction if the union was sympathetic to the employer's pleas and permitted innovation. To permit the decision to stand can only result in the elimination of forward-looking collective agreements and a reversion to bloody economic warfare between the two sides at the bargaining table.

In direct conflict with *National Woodwork* the decision below defined the work in controversy as the "LCL and LTL container work performed by (two consolidators) at their off-pier premises", rather than "the work done in the past by the longshoreman" (Dissent, A93). By focusing upon the work done by off-pier consolidators of ocean borne cargo outside of the ILA pier-side bargaining unit,

both the Board and the Majority disregarded the traditional work performed by longshoremen and the elementary principles of *National Woodwork*. As the dissent points out:

" . . . just as it would have been improper in *National Woodwork* to define the work in controversy as work on the pre-cut doors, it is wrong here to define the work in controversy as off-pier container stuffing." (Dissent, A94).

Under the Board's approach, as adopted by the majority, no work preservation clause could withstand attack.¹⁴ All clauses heretofore upheld as valid, including that in *National Woodwork*, would be illegal. The decision which conflicts with and directly contravenes *National Woodwork* is clearly erroneous and requires reversal by the Court.

¹⁴ The dissent quoted Judge Ordman as follows:

"[I]n *National Woodwork* itself, the carpenters employed by the employer refused to install precut doors unless the doors were cut on the jobsite by the carpenters themselves. The carpenters had traditionally performed the work themselves. Yet, obviously the employees of the door manufacturers . . . did that work also. Had the Supreme Court focused on the work being done by the employees of the door manufacturers at the latter's plants, as General Counsel urge be done here with respect to the operations of Consolidated and Twin, then obviously the Supreme Court would have reached a different result in *National Woodwork*. Indeed, the legitimacy of a work preservation object would be virtually precluded in any situation where it could be established that other employees at other sites were doing or had done the work for which protection was being sought." (A93-A94)

II

The decision below conflicts with decisions in other circuits and in the Second Circuit including one which upheld the very same rules now held illegal and which the parties relied upon in their negotiations.

The instant decision, limiting the longshoreman to loading and unloading vessels, ignores the realities of present day cargo handling and stands virtually alone in having such a restrictive view of the longshoremen's function. Other decisions, both in the Second Circuit, and other circuits, have recognized that much of the longshoreman's work of loading and unloading of the ship now is reflected in the stuffing of containers. To say, as did the Board, that the longshoreman cannot seek to keep the work of stuffing containers, is to deny him the right to preserve his traditional work jurisdiction.

Indeed, in 1970 the Second Circuit in *ICTC* upheld the Rules as valid work preservation provisions. The complaint there had alleged that the Rules were violative of the anti-trust laws. In upholding the Rules, as valid work preservation provisions the Court found that they had as their object "the preservation of work traditionally performed by longshoremen covered by the agreement" (Id. at 887). Since the Board framed the issue here in the same terms (i.e. what was the object of the ILA's activities) the same legal issue present in *ICTC* was present here. Further the operative facts in determining exemption from the anti-trust laws are identical to those for testing the exemption of a labor agreement from Section 8(e) under the *National Woodwork* test (see, 386 U.S. at 620-628). Accordingly, the *ICTC* decision should have been controlling, but, erroneously, it was not.¹⁵

¹⁵ Since the precedential significance of *ICTC* was apparent, the majority quoted words from *ICTC* which allegedly showed
(footnote continued on following page)

The original settlement in 1968 had the imprimatur of the Federal government on it. The Presidential Board of Inquiry had recognized that until resolution of the conflict over containerization was resolved, this vital industry would be paralyzed. The parties eventually accommodated their conflicting interest in the resultant Rules. The Rules were then challenged and upheld both in the courts under the anti-trust laws and by the General Counsel's office (*supra*, p. 9). The parties justifiably relied upon those decisions. The subsequent negotiations between the parties were predicated upon the validity of the Rules, which was one of the seven master items applicable up and down the coast. Now, many years later, they are told that a crucial part of their agreement is unenforceable in a decision which has its eyes blinded to both the history of the waterfront, and to the implications for the entire process of collective bargaining.

The rationale of the decision below also conflicts with later decisions by the First Circuit,¹⁶ Second Circuit¹⁷ and Fourth Circuit¹⁸ which dealt with the scope of the 1972 Amendments to the Longshoremen and Harbor Workers Compensation Act, 33 U.S.C. § 901 et seq. (Compensation Act). The Second Circuit in the *Pittston* case, in finding coverage for any longshoreman working on containers at

(footnote continued from preceding page)

ICTC's inapplicability to the instant case. However, to reach this desired result, the majority had to resort to quoting Judge Hays' opinion out of context and to critically change both the wording and meaning of the language actually appearing in the ICTC opinion.

¹⁶ *Stockman v. John T. Clark & Son of Boston, Inc.*, Docket No. 75-13 (July 27, 1976) (*Stockman* case) (A147-A174).

¹⁷ *Pittston Stevedoring Corp. v. Delaventura, Etc.*, Docket Nos. 76-4042, 76-4009, 76-4043 and 75-4249 (July 1, 1976) (*Pittston* case) (petition for certiorari filed) (A103-A146).

¹⁸ *ITO v. Adkins*, Docket Nos. 75-1051, 1076, 1196 and 1088 (Aug. 26, 1976).

terminals, stated that modern cargo handling methods such as containerization had brought about

"new facts of life on the waterfront, which as this Court noted in [ICTC] mean that a good deal more of the longshoreman's traditional jobs are now performed on shore. Stripping a container of goods destined to different consignees is the functional equivalent of sorting cargo discharged from a ship; stuffing a container is part of the loading of a ship even though it is performed on shore and not in the ship's cargo holds" (A136).

Similarly, the First Circuit in the *Stockman* case found broad coverage in the amendments to the Compensation Act. The Rules challenged here was part of the Boston Shipping Association's agreement with the ILA (see n.7 *supra*). In commenting on the Rules, the court stated that the agreement:

"reflects a negotiated undertaking to use only longshore labor to strip and stuff containers, and to do so exclusively at waterfront facilities. Doubtless the union insisted upon such a provision because otherwise containers could be driven to most any location and discharged there by non-waterfront labor. And its insistence upon the use of longshore labor was not totally arbitrary. Containerization greatly simplifies and speeds up the actual loading and unloading of the ship itself, cutting down the workforce needed for those operations. *Much of the loading and unloading that used to take place on or alongside the ship is presumably now reflected in the stuffing and stripping of containers. From the longshoremen's point of view this is 'traditional' work, and, as further discussed below, there is much to support their position.*" (A164) (Emphasis added)

These decisions all cited the *ICTC* case with approval. Each noted that the modern cargo handling method had

shifted and transformed the longshoreman's job so that much of the traditional work performed in loading or unloading the vessel now occurs in the form of packing and unpacking containers.

The instant decision, which limits the longshoreman's jurisdiction to loading and unloading of the vessel, thus stands alone and conflicts with the other relevant decisions in this area.¹⁹ The conflict calls for the grant of the writ and reversal of the decision below to restore uniformity in this area.

CONCLUSION

**For the reasons set forth it is respectfully urged
that the Court grant certiorari.**

Respectfully submitted,

ALFRED A. GIARDINO
Counsel for Petitioners
New York Shipping Association, Inc.
25 Broadway
New York, New York 10004

CONSTANTINE P. LAMBOS
JACOB SILVERMAN
DONATO CARUSO
Of Counsel

¹⁹ The decision also conflicts with other cases which recognize that a modern day container is "functionally a part of the ship". *Leather's Best, Inc. v. S.S. Mormaclynx*, 451 F.2d 800, 815 (2d Cir. 1971).